

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

 DOTE-00 INR-05 NSAE-00 RSC-01 FAA-00 L-02 IO-10 /040 W

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R 251724Z NOV 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6444

INFO AMCONSUL MUNICH

AMCONSUL FRANKFURT

AMCONSUL BREMEN

AMCONSUL STUTTGART

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E. O. 11652: N/A

TAGS: EAIR, GW

SUBJECT: CIVAIR: SEABOARD MUNICH CARGO OPERATIONS

REF: STATE 240793

1. SUMMARY. EMBASSY CAA HAS RAISED MUNICH AIRPORT PROBLEM INFORMALLY WITH FRG TRANSPORT MINISTRY (FMT) OFFICIALS. WHILE UNABLE TO INTERVENE DIRECTLY IN PROVINCIAL (LAND) LEGAL PROCEEDINGS, FMT RECOGNIZES ECONOMIC IMPLICATIONS OF THE COURT DECISION AND INTENDS TO EXPLORE THE MATTER FURTHER WITH GERMAN AIRPORT OFFICIALS, LUFTHANSA AND OTHER INTERESTED CARRIERS. SUBSEQUENT DISCUSSIONS WITH SEABOARD REPS INDICATED SEABOARD AT PRESENT ONLY CARRIER SUBJECT TO EXTRA TRUCKING CHARGES. IF MUNICH AIRPORT CONTINUES UNSUCCESSFUL IN ATTEMPTS TO EXTEND COURT DECISION TO OTHER CARRIERS, WE BELIEVE PURSUING DISCRIMINATORY ARGUMENT WITH FRG WOULD MERIT CONSIDERATION. ACTION REQUESTED: WE UNDERSTAND LUFTHANSA ENGAGES IN SIMILAR CARGO TRUCKING ACTIVITIES IN US AND WOULD APPRECIATE DETAILS FOR USE IN FURTHER DISCUSSION WITH FRG. END SUMMARY.

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2. EMBASSY CAA HAD BEEN BRIEFED BY SEABOARD VP NORMAN

BLAKE ON THE MUNICH CARGO PROBLEM BEFORE RECEIPT OF REFTEL. PAA DIRECTOR RUNNETTE ALSO RAISED THE QUESTION OF GERMAN CARGO OPERATIONS IN LIGHT OF THE MUNICH COURT DECISION, BUT TOLD US THAT HE WAS NOT PAYING EXTRA TRUCKING FEE AND WOULD NOT DO SO UNLESS MUNICH AIRPORT SUED PAA. ON THE BASIS OF THESE APPROACHES, EMBASSY CONTACTED FMT OFFICIALS WHO SUGGESTED THAT AN INFORMAL EXCHANGE OF VIEWS ON THE SUBJECT WOULD BE WORTHWHILE. MEETING WAS DELAYED SOMEWHAT BECAUSE FRG OFFICIALS WANTED TO REVIEW A COPY OF THE MUNICH COURT'S RULING BEFORE HAND.

3. DRAWING ON REFTEL, EMB CAA EXPRESSED US CONCERN ABOUT THE ABILITY OF US CARRIERS TO CONTINUE SERVING MUNICH (AND FRG REGIONAL AIRPORTS) ECONOMICALLY IN THE FACE OF INCREASED COSTS OCCASIONED BY THE MUNICH COURT DECISION. EMB CAA FURTHER POINTED OUT THAT THE INTRODUCTION OF LARGE CAPACITY AIRCRAFT MADE CONSOLIDATION AT POINTS LIKE FRANKFURT AN INEVITABLE FEATURE OF CARGO TRANSPORT. UNDER THE CIRCUMSTANCES, WE SAID WE WOULD BE INTERESTED IN LEARNING FMT'S VIEWS ON THE PROSPECTS FOR RESOLVING THIS PROBLEM.

4. PAAS POINTED OUT THAT THE MUNICH COURT DECISION WAS BASED SOLELY ON INTERPRETATION OF THE AIRPORT RENTAL AGREEMENT AND DID NOT TAKE INTO ACCOUNT BROADER CONSIDERATIONS SUCH AS THE PROVISIONS OF IATA RESOLUTIONS 507 (B) AND 512 (B). HE ASSURED EMB CAA THAT THE FRG HAD PLAYED NO ROLE IN DEVELOPMENTS TO DATE AND WOULD NOT BE ABLE TO INTERVENE DIRECTLY IN LEGAL PROCEEDINGS AT THE LAND OR PROVINCIAL LEVEL. REVIEWING THE PRESENT SITUATION, PAAS POINTED OUT THAT SEABOARD HAD RIGHTS TO MUNICH WHICH FOR ITS OWN REASONS IT CHOSE NOT TO FULLY EXERCISE AND THAT THE MUNICH COURT ACTION IN EFFECT DID NOT DENY SEABOARD'S RIGHT TO TRUCK CARGO TO FRANKFURT.

5. EMB CAA ACKNOWLEDGED BOTH POINTS BUT STRESSED THAT IT WAS COMMERCIALY UNREALISTIC TO EXPECT CARRIERS TO PROVIDE AIR CARGO SERVICES TO POINTS NOT PROVIDING A LIMITED OFFICIAL USE

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SUFFICIENT VOLUME OF BUSINESS TO MAKE SUCH FLIGHTS ECONOMICALLY FEASIBLE. AT THE SAME TIME, THE MUNICH AIRPORT'S DECISION TO CHARGE A PENALTY FEE ON TRUCKED CARGO PLACED SEABOARD AT A COMPETITIVE DISADVANTAGE VIS-A-VIS LUFTHANSA (LH) WITH ITS DOMESTIC ROUTE PATTERN.

6. PAAS SAID THAT HE KNEW THAT LH TRUCKED SOME CARGO BETWEEN MUNICH AND FRANKFURT; HOWEVER, HE RECOGNIZED

THAT LH'S PROBLEM WAS LESS ACUTE BECAUSE OF THE AIR-
LINE'S FREQUENT AIR SERVICE TO MUNICH. ON THE OTHER
HAND, LH HAD INVESTED IN AN ELABORATE CARGO TERMINAL AT
FRANKFURT AND THEREFORE WOULD PROBABLY BE DISADVANTAGED

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TO SOME EXTENT BY THE MUNICH COURT DECISION. PAAS SAID
HE PLANNED TO CONTACT LH REPS IN THE NEAR FUTURE TO
ASCERTAIN THEIR VIEW OF THE MUNICH COURT DECISION AND
THE GENERAL QUESTION OF CARGO CONSOLIDATION.

7. PAAS ADDED THAT THE FRG HAD COME TO THE
CONCLUSION THAT IATA RESOLUTIONS 507 (B) AND 512 (B)
MERITED FURTHER EXAMINATION WITH A VIEW TO EVENTUALLY
FILING RESERVATIONS TO THEIR CONTINUED APPLICATION IN
THE FRG. SPECIFICALLY, THE FMT WAS CONCERNED BY THE
FACT THAT THE RESOLUTION CREATED SITUATIONS WHERE CARGO
WAS TRUCKED FAR GREATER DISTANCES THAN WOULD OTHERWISE
BE THE CASE IF THE AIRLINES WERE NOT MOTIVATED TO TRUCK
FROM AIRPORT TO AIRPORT.

8. PAAS CONCLUDED BY EXPRESSING THE OPINION THAT THE RECENT COURT RULING WAS NOT THE FINAL WORD ON THE SUBJECT, SINCE THERE WAS A GOOD CHANCE THAT HIGHER COURTS WOULD TAKE INTO CONSIDERATION THE IATA RESOLUTIONS IN CONNECTION WITH SEABOARD'S APPEAL AND REVERSE THE MUNICH COURT. HE ADDED THAT THE FMT FULLY APPRECIATED THE LIMITED OFFICIAL USE

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IMPORTANCE OF THE UNDERLYING COMMERCIAL PROBLEMS INVOLVED AND THEREFORE INTENDED TO EXPLORE THE MATTER FURTHER THROUGH DISCUSSIONS WITH GERMAN AIRPORT OFFICIALS AND INTERESTED CARRIERS. STRESSING THE IMPACT OF THE MUNICH ACTION ON THE INTERESTS OF US CARRIERS, EMB CAA URGED PROMPT CONSIDERATION BY THE FMT AND SUGGESTED THAT THE MSNISTRY AND THE EMBASSY MAINTAIN CLOSE CONTACT ON FURTHER DEVELOPMENTS--TO WHICH PAAS READILY AGREED.

9. IN A SUBSEQUENT DISCUSSION WITH CAA, SEABOARD EXECUTIVES BLAKE AND MAHONEY REPORTED THAT THE PRESENT ARRANGEMENT WITH THE MUNICH AIRPORT COMPANY WOULD LAPSE ON NOVEMBER 26, AND THAT THEIR ATTORNEY WAS ATTEMPTING TO NEGOTIATE A LOWER TRUCKING FEE. BLAKE POINTED OUT THAT DESPITE THE "CLASS ACTION" NATURE OF THE MUNICH COURT'S DECISION, ONLY SEABOARD WAS PRESENTLY PAYING THE TRUCKING CHARGE. THE MUNICH AIRPORT COMPANY WAS, HOWEVER, ATTEMPTING TO BRING THE OTHER CARRIERS INTO LINE BUT WITH LITTLE SUCCESS THUS FAR. IN THIS CONNECTION, BLAKE SAID THAT SAS HAD SUCCEEDED IN GETTING AN INJUNCTION AGAINST THE MUNICH AIRPORT COMPANY'S DECISION TO PROHIBIT TRUCKING. THE LATTER'S APPEAL WILL BE HEARD IN A MUNICH DISTRICT COURT ON DECEMBER 5.

10. COMMENT: WE WILL FOLLOW-UP WITH THE FMT LATER THIS WEEK AND REPORT FURTHER DEVELOPMENTS PARTICULARLY AS REGARDS LUFTHANSA'S POSITION ON THE TRUCKING ISSUE. THE LEGAL SITUATION IS OBVIOUSLY COMPLEX; HOWEVER, SHOULD THE MUNICH AIRPORT COMPANY CONTINUE TO BE UNABLE TO APPLY THE SAME TREATMENT TO OTHER CARRIERS AS TO SEABOARD, WE BELIEVE WE WOULD HAVE A FAIRLY GOOD ARGUMENT OF "DE FACTO" DISCRIMINATION. IF THE SAS INJUNCTION IS UPHOLD, WE WOULD BE INCLINED TO POINT THIS OUT TO THE FMT AND THE FONOFF. ACTION REQUESTED: WE UNDERSTAND FROM SEABOARD THAT LH ENGAGES IN TRUCKING ACTIVITIES IN THE US SIMILAR TO THAT OCCURRING BETWEEN MUNICH AND FRANKFURT. ANY DETAILS THE DEPARTMENT COULD PROVIDE WOULD BE USEFUL IN DISCUSSIONS WITH FRG REPS. HILLENBRAND

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